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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic report of States parties due in ...

Addendum

URUGUAY *

[19 December 1996]

* For the third periodic report submitted by the Government of Uruguay, see document CCPR/C/64/Add.4; for its consideration by the Committee, see documents CCPR/C/SR.1216-SR.1218 or the Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), paras. 467-510. The concluding comments adopted after consideration of this report are reproduced in document CCPR/C/79/Add.19.

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INFORMATION CONCERNING EACH ARTICLE OF THE COVENANT

Article 1

Right to self-determination

1. The Eastern Republic of Uruguay, according to its Constitution, is the political association of all the inhabitants of its territory, without distinction between nationals and foreigners. Full sovereignty is vested in the nation, which has the exclusive right to enact laws (art. 4). The Republic is, and always shall be, free and independent of any foreign power (art. 2).

2. The country's wealth is protected by the Constitution:

> "All the artistic and historical wealth of the country, regardless of ownership, constitutes the Nation's cultural treasure. It shall be placed under the protection of the State, and the law shall establish what is deemed necessary for such protection" (art. 34).

3. The State provides guidance in foreign trade policy, protecting productive activities which generate exports and import replacements. The Constitution specifically stipulates that:

> "Any commercial or industrial organization in the form of a trust shall be subject to State supervision" (art. 50, para. 2).

Article 2

Right to an effective remedy in cases where rights have been violated

Prohibition of discrimination

4. The Uruguayan Constitution recognizes that all persons are entitled to equal enjoyment and exercise of the rights guaranteed therein. Article 7 guarantees to all inhabitants of the Republic, whether nationals or aliens, the right to be protected in the enjoyment of life, honour, freedom, security, labour and property. This provision includes the right of every person to freely enter, sojourn in and leave the country, together with his possessions, provided that he obeys the law and in the absence of third party claims.

5. According to official statistics, in 1993 there were 103,002 aliens residing in the country; of that total, 11,074 arrived in the country between 1980 and 1985, while 70,693 had settled there prior to 1960.

6. In 1993, the State provided 1,734 homes to 1,054 men and 630 women. The majority of foreign residents are from Europe (Spain: 62,145, Italy: 31,546, Germany: 14,872) and Latin America (Argentina: 38,057, Brazil: 19,669).

7. Owing to the wide availability of schooling and the fact that the educational system is completely free of charge at the primary, intermediate and secondary levels, the number of foreign children attending the Uruguayan public education system has risen over the past five years.

Legal remedies in cases where rights have been violated

8. As stated in the second and third periodic reports of Uruguay, the system of remedies for violations of fundamental human rights is based on the procedures of habeas corpus and amparo.

The reform of criminal procedure, an effective guarantee of respect for human rights

9. Without prejudice to the above specific measures, Uruguayan legal opinion recognizes that any guarantee of human rights through criminal procedure requires a substantive reform of the principles which have so far governed the structure of the Uruguayan system of criminal justice. In that regard, the former Dean of the Law Faculty of the Universidad de la República 1/ maintains that:

> "There is no doubt that in the case of human rights as well, the fundamental guarantee lies in procedure and in the application of certain rules leading to more immediate and effective protection. The following aspects should be emphasized:
>
> (a) at the structural level, it is essential to have 'natural' - in other words, impartial - judges. Military judges are thus precluded;
>
> (b) with regard to procedures, the appropriate use of preventive and pre-trial measures is especially important;
>
> (c) with regard to the trial as such, regular structural review is needed in order to ensure direct communication between judges and the parties concerned;
>
> (d) there is also a need for virtually instantaneous implementation of decisions."

10. These new guidelines are part of a process of in-depth debate and discussion concerning all the substantive and procedural provisions of Uruguayan domestic law. Uruguayan criminal law is undergoing a complete transformation, whose ultimate goal is the effective consolidation of fundamental human rights guarantees.

11. All the bills on the reform of criminal procedure which have been submitted to Parliament since 1986 have had one common denominator: they have favoured the principles of oral argument, public hearings, immediacy, concentration, non-delegation, equality of the parties and reasonable duration.

12. The first such bill was the outcome of the work of a special committee which was established in 1990, headed by Dr. Piaggio. The second was an

initiative on the part of the Executive. The third was prepared by the Supreme Court, in consultation with the Academic Institute of Procedural Law and the Chair of Criminal Law of the Law Faculty of the Universidad de la República, and was drafted by Ms. Adela Reta and Ms. Ofelia Grezzi.

13. Our current mixed system (inquisitorial and adversarial) is being replaced by a classic adversarial model in two stages: preliminary investigation and trial. The secret inquiry proceedings, which denied defence lawyers access to pre-trial proceedings ordered or implemented by the court, are being abolished and replaced by the opposite approach.

14. In the event of a complaint or application by the aggrieved party, a preliminary hearing is held, in the presence of a representative of the Public Prosecutor's Office, the plaintiff and the accused both of these with legal advice. The purpose of this hearing is to shed light on the substance of the complaint, to determine whether it appears to constitute an offence and, if so, to attempt to mediate between the two parties in order to reduce the incidence of judicial intervention in cases with little impact on society.

15. This stage is followed by the preliminary inquiry, which is based on the active participation of the parties to the trial until the end of the investigation. The purpose of the inquiry is to obtain proof of the events which constitute the offence, including circumstances related to, inter alia, place, time, method, identification of those responsible and chief motives.

16. The investigatory procedures should be conducted in public session with previous notification of the prosecutor and defence counsel, who shall both be present and participate actively in the investigation.

17. When the preliminary inquiry has been completed, the judge decides whether to initiate criminal proceedings. For the case to proceed, a request to that effect had to be made by the Public Prosecutor.

18. Upon conclusion of the investigation provided for in the initiating order, the preparatory stage of the proceedings begins, leading to the case being brought before a competent court.

19. If the accused pleads not guilty, the judge must order a hearing for submissions, at which he must preside personally without delegation. The prosecutor, the accused and defence counsel must be present at that hearing. The arguments shall take place in public hearing upon pain of mistrial, and the verdict must be handed down on the same day.

Regulations governing the "habeas corpus" procedure

20. Another innovation contained in the draft Code of Penal Procedure is the development of the remedy of habeas corpus, which is enshrined in article 17 of the Constitution.

21. Article 360 of the proposed draft defines the remedy as follows:

"Article 360 - Concept

Habeas corpus is a remedy which protects personal freedom of movement against any arbitrary act by any administrative authority which denies, restricts, limits or threatens such freedom, and which protects persons deprived of liberty against torture and other treatment or conditions of imprisonment which violate human dignity.

Article 362 - Legitimacy

362.1 This appeal may be lodged by the party concerned, by the Prosecutor's Office or by any other person, or may be initiated automatically.

362.2 The competent authority is authorized to act on such appeals, without prejudice to his duty to report thereon immediately to his superiors and his right to legal advice.

Article 363 - Competence

363.1 The appeal shall be heard by the criminal judge on duty in the place where the acts were committed or, if this is not easily determined, by any judge with jurisdiction in criminal cases.

363.2 No exception or plea of incompetence is admissible in these proceedings, and the court concerned may give precedence only to the court with jurisdiction in proceedings related to the matter in question and which is competent under the general regulations.

363.3 The court's action in the appeal does not give rise to prevention.

363.4 In the case of complaints of torture or ill-treatment of detainees already under the jurisdiction of a court, that court shall have sole competence.

363.5 If the person concerned is under 18 years of age, the Juvenile Judge shall have jurisdiction in the matter."

Article 3

Right to equal enjoyment of civil and political rights by men and women

22. As stated in the initial report, men and women are absolutely equal under the law, and the State of Uruguay has enacted special legislation to punish discrimination in the treatment of, or opportunities granted to, women. However, according to information compiled by the National Statistics Institute in preparation for the Beijing Conference, 2/ there are several specific areas in which full equality has not been achieved.

Women and employment

23. According to the above-mentioned document, 45.5 per cent of women over the age of 14 are employed and constitute 42.4 per cent of the economically active urban population. Women join the labour force with a higher average level of education than men; 19.3 per cent of women on the labour market have a post-secondary education, twice the comparable percentage of men. However, with regard to occupational distribution, four times as many men as women fall into the employer category, and two and a half times as many women as men are unpaid family workers.

24. Women workers are a majori[illegible]n the fields of personal services (67 per cent), and professional and technical services (62 per cent). Only one out of four managers is a woman. Over half (55.4 per cent) of all unemployed persons in the country are women.

25. The document submitted in annex to this report shows that women's average hourly wage is 75 per cent that of men. That inequality is greatest for professionals and managers, areas in which women's hourly wage is only a little over half that of men in equivalent posts.

Women and participation

26. Since 1971, women have maintained an 8 per cent lead over men on the voting rosters.

27. With regard to their participation in Parliament as representatives and substitutes, women held seven posts of Deputy (of a total of 99) and two of Senator (of a total of 30) between 1995 and 1999. In the Government the Minister of Labour and Social Security is a woman.

28. At the State administration level, the percentage of women ranges from a high of 70 per cent in the Ministry of Public Health to about 13 per cent in the Ministry of Transport and Public Works.

29. At the "M" rank, all 17 of the Ministry of Foreign Affairs ambassadors were men in 1994. Only four of the 24 posts of Minister were held by women. There are no women on the Supreme Court, and 16 per cent of appeal court judges are women.

30. With respect to trade unions, in 1993, 3 of the 17 delegates to the Executive Secretariat of the Plenario Intersindical de Trabajadores-Convención Nacional de Trabajadores (PIT-CNT) and 5 of the 42 union representatives were women. In the teachers' unions, where women account for 92 per cent of the membership, only 6.6 per cent of the high-level posts are held by women.

Women and violence

31. In this respect, the State of Uruguay has developed a double strategy which covers two aspects of the problem: prevention and punishment.

32. With regard to prevention, in addition to the establishment of a Specialized Police Station for the Protection of Women and the Family, which

has functioned as part of the police department since 1990, an Office of Technical Assistance to Victims of Domestic Violence was established in 1992. This project was the result of a need to set up a separate office to analyse, investigate, coordinate and guide activities related to domestic violence. The scope of the Ministry of the Interior and its close association with crime-related matters provide opportunities for improved prevention from a victim-centred perspective.

33. The Office of Assistance and Treatment provides advice and attention in individual cases. When there is a complaint of ill-treatment, a risk evaluation is carried out, the aggressor is interviewed and, if possible, mediation is attempted before judicial intervention is resorted to. The Office handles about 100 cases per month.

34. These activities are supported by a training programme for government officials, sponsored by the Ministry of Education and Culture through the National Institute for Women and the Family. This training has directly benefited 200 police officers, family and women's rights information centres, emergency facilities and lawyers. The purpose of this initial effort was to increase community awareness of an often-ignored problem.

35. In addition to these preventive activities, acts involving domestic violence have been criminalized with the designation of new offences, which were incorporated into the Penal Code under Act No. 16.707 of 12 July 1995 (Annex 4).

Article 4

States of emergency

36. Since the restoration of democracy in 1985, Uruguay has enjoyed a situation of civic normality with the full development of democratic institutions and fundamental guarantees derived from that system.

37. When the third periodic report was submitted, the Committee expressed its concern over the Constitutional provisions relating to the declaration of a state of emergency, noting that the grounds for declaring such a state were too broad and that the range of rights which might be derogated from did not conform to article 4 of the Covenant (CCPR/C/79/Add.19, para. 8). No change has been made in this regard. The Uruguayan Constitution may be amended only through the procedure established in article 331 thereof (Annex 2).

38. When the Partido Colorado was re-elected to another term of office (1995-1999), delegates from the four political parties represented in Parliament (the Partido Colorado, Partido Nacional, Encuentro Progresista (Frente Amplio) and Nuevo Espacio) began negotiations with a view to reforming the Constitution. The amendments approved by Parliament, which will be submitted to a referendum on 8 December 1996, contain no provision in this regard.

39. However, several additional remarks should be made concerning this matter. Article 31 of the Constitution states that:

> "Individual security may not be suspended except with the consent of the General Assembly or, if the latter has been dissolved or is in recess, the Permanent Commission, and only in the event of an extraordinary case of treason or conspiracy against the country; even so, such suspension may only serve the purpose of apprehending the guilty parties, without prejudice to the provisions of article 168, paragraph 17."

40. Article 168, paragraph 17 states that:

> "The President of the Republic, in cooperation with the appropriate Minister or Ministers, or with the Council of Ministers, has the following duties:
>
> ... To take prompt security measures in grave or unforeseen cases of foreign attack or internal unrest, reporting within twenty-four hours to a joint session of the General Assembly or, during its recess, to the Permanent Commission, on the action taken and its motives, the decision of the latter bodies being final."

41. The prompt security measures stipulate that individuals may be arrested or transferred from one place in the country to another, provided they do not elect to leave it. This measure, like the others, must be submitted within twenty-four hours to a joint session of the General Assembly or to the Permanent Commission, which will take a final decision on the matter. Such detention shall not be at a place intended for the incarceration of criminals."

42. In Uruguay, from the 1830 Constitution to the current one, in force since 1967, the Executive has had the two above-mentioned "emergency powers" under the two acts referred to above, which concern, respectively, suspension of individual security and prompt security measures. According to a legal commentary on these articles: "The emergency powers of the Executive and, in general, of a State under the rule of law or a constitutional system, are one of the greatest sources of concern from the constitutional point of view, because they pertain to exceptional times or situations caused by political subversion, public disaster or grave social unrest. In such situations, it is of the greatest importance that public freedoms and individual guarantees should be preserved. "Emergency powers" may not be invoked as a pretext for human rights violations." 3/ Thus, it has been generally admitted that democratic constitutional systems allow the Executive to assume emergency powers in dealing with exceptional situations. 4/

43. An analysis of emergency measures in Uruguayan law shows that:

(a) They are a response to states of emergency which pose a threat to the State's institutional, legal and social order;

(b) They are initially taken by the Executive, but they can only be extended or suspended by Parliament;

(c) They may result only in arrest or transfer; they may not suspend any human right other than freedom of the person.

Because they are enshrined in domestic and international law, the only restrictions on the rights of the individual which they permit must be temporary, exceptional and directly established and related to freedom.

44. The two above-mentioned acts are based on two exceptional but different situations. Article 31 refers to offences, whereas article 168, paragraph 17 refers not to offences but to grave, unforeseen cases of foreign attack or internal unrest; therefore, the measures the State may take are also different. In the latter case, it has been maintained that this impairment of individual guarantees, which allows the arrest of a person who has not committed any offence, does not imply the total loss or disregard for his minimum guarantees. The prompt security measures are emergency powers pertaining to, rather than outside or above, the rule of law. 5/

45. It has also been understood that during such states of emergency, the remedy of habeas corpus remains in effect, thus providing in any case a primary remedy for individuals, without prejudice to other internal protection mechanisms which are not affected by the measures in question.

46. In conclusion, prompt security measures are an instrument which the Constitution places in the hands of the Executive as a means of dealing with exceptional situations in order to protect or restore order when it is threatened or affected to such an extent that normal measures are no longer sufficient. Emergency powers are founded on the principle that "salus populis suprema lex est" (the people's well-being is the supreme law). This means that the Constitutional provisions in question in no way conflict with article 4; rather, they refer specifically to the situations and emergencies provided for therein.

47. Nevertheless, the State of Uruguay considers that procedural regulation of the remedy of habeas corpus through the draft Code of Penal Procedure, currently under consideration in Parliament, constitutes substantial progress. Article 361 of the new draft expressly states:

> "Suspension of guarantees
>
> Whenever the situations mentioned in the previous article occur as a result of the suspension of individual security or the implementation of prompt security measures, in accordance with the provisions of articles 31 and 168, paragraph 17, of the Constitution, the remedy of habeas corpus remains in effect. In such cases, it shall be limited to strict compliance with formal constitutional requirements, the consent or notification of the General Assembly or the Permanent Commission, as appropriate, monitoring of the treatment of detainees and the place and conditions of detention or transfer, and the availability of the option of leaving the country, where appropriate."

Article 5

Prohibition of limitations on the exercise of rights not guaranteed under the Covenant

48. At the internal level, article 72 of the Constitution authorizes the promotion and protection of all human rights, even those not specifically guaranteed. The article states:

> "The enumeration of rights, duties and guarantees made in this Constitution do not exclude others which are inherent in human beings or are derived from a republican form of government."

Article 6

Right to life

49. The right to life is constitutionally and legally guaranteed in Uruguay. There has been no case of enforced disappearance and no extrajudicial or summary executions of individuals or groups during the period covered by this report. By Act No. 16.724 of 13 November 1995, Parliament ratified the Inter-American Convention on the Forced Disappearance of Persons. The death penalty was abolished during the last century, and Uruguay actively promotes the abolition of this outdated punishment in its foreign relations.

Actions taken to identify Uruguayan citizens who were arrested and disappeared in the Argentine Republic between 1973 and 1983

50. On 20 April 1995, the Committee of Relatives of Arrested and Disappeared Uruguayans sent a petition to Mr. Alvaro Ramos, Minister for Foreign Affairs, requesting the Ministry through diplomatic channels, to seek information on the lists of Uruguayan citizens who were arrested and disappeared at the Argentine Naval Engineering College between 1973 and 1983. The request was prompted by public statements made in March 1995 by a retired Argentine Army captain, who stated that he had witnessed the execution of political prisoners during that period.

51. The Foreign Ministry immediately instructed the Uruguayan Embassy in Argentina to comply with the request made by the Relatives Committee. The diplomatic Mission requested the relevant information from the Argentine Ministry of Foreign Affairs, International Trade and Religion by letter dated 3 April 1995.

52. On 4 May 1994, the Argentine Ministry of Foreign Affairs, International Trade and Religion's Office of Human and Women's Rights transmitted to the Uruguayan Ministry of Foreign Affairs a list of 117 allegedly Uruguayan citizens, who had been arrested and disappeared in Argentina between 1973 and 1983. Considerable differences appeared between the names on the Argentine list and those submitted to the Foreign Ministry by the Relatives of Uruguayans Committee. The Uruguayan Government therefore insisted that the Argentine Government should either confirm or correct the list of names which it had provided. Finally, on 19 July 1995, the Argentine Government corrected

the information which it had initially provided, thereby making it possible to remove the names of several non-Uruguayans which had mistakenly been included in the first list.

53. As a result of the measures taken by the Ministry of Foreign Affairs on behalf of the State, through many contacts and meetings with the Argentine Government and with the Committee of Relatives of Arrested and Detained Uruguayans, it was possible to confirm:

(a) that information exists in Argentina on the enforced disappearance of 120 Uruguayan nationals;

(b) that the above-mentioned list includes 12 Uruguayans whose enforced disappearance was never reported by the Committee of Relatives of Arrested and Detained Uruguayans;

(c) that the Argentine Government confirmed that in 1995, one woman, Lidia Noemí Curto Campanella, whose name appears on the lists of Uruguayans who disappeared in Argentina prepared by Uruguayan non-governmental organizations (NGOs) and who had been reported missing since 1976, personally lodged an appeal against the Argentine State for compensation for illegal detention, giving personal identification and her current address in Buenos Aires.

Facilities provided by the State of Uruguay to relatives of Uruguayans in situations of "enforced disappearance"

54. As a result of the ongoing contacts between the Foreign Ministry and the Relatives Committee during the first few months of 1995, and of the action taken in that regard, on 12 June 1995 the Relatives Committee requested exemption from payment of consular fees for the legitimation of civil status papers required in order to claim compensation pensions, by virtue of an act promulgated by the Argentine State. The dependents of Uruguayan citizens in situations of enforced disappearance in the Argentine Republic may benefit from this foreign legislation.

55. Although tax exemptions may be granted only under a general act, the Executive decided that the situation merited relief under article 21, section E, of Act No. 11.924 and that it was therefore appropriate to grant full exemption from the payment of consular fees to individuals in the above-mentioned situation. As a result of this decision, the Committee of Relatives of Arrested and Disappeared Uruguayans was able to obtain the certification, at no cost, of 139 official documents to be used as proof of kinship with Uruguayans who were arrested and disappeared in the Argentine Republic, as part of the qualifying procedure for beneficiaries of Argentine Act No. 24.411.

Location of the son of Uruguayans who had disappeared in Argentina

56. In July 1995, investigations carried out by the Argentine judicial authorities in cooperation with NGOs of that country led to the identification of the 10-year-old legitimate son of Uruguayan parents, Julio Cesar d'Elia Pallares and Yolanda Casco Ghelpi. Both parents have been in a situation of

arrest and disappearance since 22 December 1977, as a result of events which took place in the Argentine Republic. The child was born in 1977 during the detention of his mother, who was eight months pregnant at the time of her arrest. An investigation and DNA histocompatibility testing established by a probability of 99.99 per cent that Carlos Rodolfo de Luccia was, as alleged, the grandson of the Casco Ghelpi Reggiani couple. On the basis of this confirmation an Argentine federal judge, Roberto José Marquevich, ordered the trial of an officer of the Argentine Navy and his wife on charges of child abduction and detention and falsification of the information contained in official civil status documents.

57. On various occasions, the Argentine court summoned to appear before it the Uruguayan relatives of the child who had been located. The Uruguayan Ambassador to the Argentine Republic, acting on direct orders from the Minister for Foreign Affairs, remained in close contact with the above-mentioned Uruguayan family and continually assisted the Argentine judge in his efforts to shed light on the facts and to assist in restoration of the identity of a fellow Uruguayan.

Action to identify Uruguayan nationals arrested and disappeared in Chile and Paraguay between 1970 and 1985

58. In late December 1994, the remains of a Uruguayan national, who had become a case of forced disappearance following the coup d'état that brought down the Constitutional President of Chile, Salvador Allende in 1973, were found in a common grave in Santiago, Chile. The search for Uruguayan national Arazati López López was initiated in 1985 by the democratic Government of Uruguay through diplomatic negotiations with the Chilean authorities of the time. According to a report by the organization Service Peace and Justice (SERPAJ), the remains of the Uruguayan national were repatriated after their discovery and now rest in a local cemetery.

59. Contacts were also stepped up with the Chilean and Paraguayan Foreign Ministries to look for three other Uruguayan nationals in similar circumstances.

Action to identify the corpses found on the coasts of Uruguay in 1973

60. In 1995, at the initiative of Councillors Ricardo Arbeleche and Alberto Badaracco, the Departmental Council of Colonia opened an investigation to determine what had been done between 1976 and 1985 with regard to the discovery of unidentified corpses on the beaches of the Department of Colonia. Based on the information gathered, the following conclusions may be drawn:

(a) The eight bodies are still buried in the Colonia municipal cemetery and have still not been identified;

(b) The burials took place between 3 January and 8 September 1976;

(c) The forensic examinations found clear evidence of torture on the corpses (bullet wounds, fractured bones, hands bound, genital lesions);

(d) Most of them were wearing clothing from Argentina. An Argentine identity card in the name of Maria Cristina Cámpora was found in the clothing of a male corpse.

61. All the information gathered was sent through diplomatic channels to the competent authorities in Argentina and to Argentine non-governmental organizations (NGOs) (Comité de Abuelas de Plaza de Mayo).

Article 7

Right to physical integrity

Torture and domestic Uruguayan law

62. Even though there is no separate offence designated as "torture" in Uruguayan criminal law, any conduct involving torture is prohibited and severely penalized by the country's legal and administrative authorities.

63. As stated in previous reports, by virtue of Act No. 15,798 of 27 December 1985, Uruguay ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and on 9 December 1985 signed the Inter-American Convention to Prevent and Punish Torture.

64. A copy of the periodic report of Uruguay to the Committee against Torture (CAT/C/17/Add.16), prepared in 1995, is contained in the annexes and includes a compendium of case law illustrating the modalities of implementation of the international standards proscribing behaviour that endangers the right to physical integrity and the Convention's applicability in the domestic sphere.

Medical experiments

65. With regard to the free consent required prior to medical or scientific experiments, the standards of medical ethics approved at the governmental level may be mentioned.

66. Article 5 of Executive Decree No. 258/92, adopted on 9 June 1992, 6/ stipulates the following:

> "The physician must adequately inform the patient when consulted with truthfulness and objectivity regarding the circumstances of his case. In this respect, he shall try to obtain the 'free and informed consent' of the patient or his legal representatives prior to undertaking the necessary medical treatment, bearing in mind the fact that minors under the age of 18 7/ (art. 280 of the Civil Code) and others lacking legal capacity may not give valid consent except in cases provided for by law."

67. In order to help the Committee evaluate judicial practice in this respect, Sentence No. 12,645 of 7 February 1994, handed down by the Third Rota Criminal Appeals Court, is appended (annex 6). In that case, the legal

authorities ordered the indictment without imprisonment of a member of the medical profession who applied electric shock to a patient without previously obtaining the consent required by law.

68. The Medical Ethics Code adopted by the Medical Association of Uruguay 8/ contains several articles that regulate clinical research and experimentation on human beings. 9/ Basically, any research or experimentation must have received, in advance, the backing of the Ethics Committee. This body bases its decisions on the World Medical Association Assembly declarations of Nürnberg, Helsinki and Tokyo.

69. The Code confirms the patient's right to give his "valid consent" before taking part in any type of research, along with the doctor's duty to obtain that consent. A corollary of this duty is the responsibility of the attending physician for any injury arising from the experimentation.

Article 8

Slavery

70. Although slavery and servitude are unknown in Uruguay today, in 1995 the Executive for the third time addressed a message and draft law to the Legislature requesting it to ratify the Slavery Convention of 25 September 1926 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 5 September 1956.

71. During parliamentary debate on a bill submitted to the Human Rights Commission of the House of Representatives concerning prison labour, some NGO representatives 10/ expressed their concern about the compatibility of draft domestic legislation with article 8 of the International Covenant on Civil and Political Rights.

72. The bill in question established the compulsory nature of prison labour, although it clearly prohibited such labour from causing any distress. The NGOs believed that compulsory labour was in itself a source of distress.

73. The Executive expressed a similar opinion when the Minister of the Interior appeared before the parliamentary commission considering the bill. 11/ The consideration given by the nation's executive and legislative authorities to the international norms governing this question demonstrates the extent of Uruguay's commitment to its binding obligations under international human rights instruments. As a result, the bill underwent more exhaustive study, resulting in a formulation compatible with international norms.

Article 9

Right to liberty and security of person

74. With reference to constitutional provisions guaranteeing the right to personal liberty, there have been no changes affecting the information provided to the Committee in Uruguay's previous reports. Nonetheless, several

bills are being debated in Parliament aimed at amending national legislation on pre-trial detention. This aspect of the question was one of the Committee's main concerns during its consideration of the third periodic report of Uruguay (CCPR/C/79/Add.19, para. 9). The overall reform of Uruguayan criminal procedures includes specific rules to ensure that pre-trial detention reverts to its protective role, without constituting advance punishment, as hitherto.

Analysis of the situation regarding pre-trial detention

75. According to official statistics from the Department of Information and Statistics of the Supreme Court of Justice, about 80 per cent of detainees in the country's penal institutions fall into the category of accused or defendants. Domestic legal texts and case law have described the situation as amounting to a grave violation of the rights of justiciable persons.

76. Some initiatives are currently being considered to rectify the obvious shortcomings of the system. In 1995, the Supreme Court of Justice drafted a bill on alternative measures to prison sentences, which should be applied in our system of criminal justice. 12/ The bill stipulates the conditions under which such alternative measures may be applied.

77. Article 2 of the bill provides as follows:

> "The measures referred to in the foregoing article shall be applied at the time of the committal order or final judgement. For committal orders, they shall apply when it can be determined prima facie that, should a sentence be pronounced, it would be a prison sentence. In the case of final judgements, the alternative measures shall apply:
>
> (a) In the case of a prison sentence;
>
> (b) In the case of culpable or premeditated wrongs, where the sentence does not exceed three years in prison;
>
> (c) In the case of wilful wrongs for which the sentence does not exceed three years in prison, where the judge, taking into account the guilt, prior social behaviour and personality of the convicted person, believes with good reason that an alternative measure may be substituted for the prison sentence;
>
> (d) In the case of prison sentences exceeding three years, the judge may have the option to impose an alternative measure, so long as the subject does not display serious personality disorders or drug or alcohol addiction, which shall have been previously notified to the judge by the appropriate experts, who shall examine the individual with regard to the act he has committed, the circumstances surrounding the act and the consequences thereof."

78. Echoing this opinion, and as a part of the reform of the trial system in general, it has been deemed prudent in the proposed Code of Penal Procedure (annex 9) to maintain the existing regime of the so-called "prosecution without prison" laws, while introducing several innovative provisions.

79. As stated in the explanatory preamble to the draft Code of Penal Procedure, according to data from a survey of decisions and opinions rendered by courts and government attorney's offices of Montevideo on criminal matters, in the period January-April 1992, 82 per cent of trials might not have led to prison sentences. However, for reasons of criminal policy, it is not possible to move directly from a regime in which deprivation of liberty is the rule to one in which it becomes the exception.

80. Chapter VI of the draft Code of Penal Procedure deals with "Deprivation or restriction of the physical liberty of the accused". The principle governing detention requires that no one may be deprived of liberty or have his liberty restricted except in cases of flagrante delicto or under orders from the competent court.

81. The following restrictions may be imposed:

"Article 185. Restrictions on the physical liberty of the accused.

185.1 If the accused has not been deprived of his physical liberty, in substitution thereof the court may decide on the following measures:

(1) The obligation to establish a residence and to refrain from changing it without notifying the court immediately of the change.

(2) Prohibition from leaving national territory without prior approval of the court.

(3) Obligation to report periodically, at least once a month, to the pertinent authority.

(4) Prohibition from going to certain places or undertaking certain activities.

(5) Prohibition from leaving a specific district within the country or residing in another.

(6) Obligation to place oneself under the care or supervision of a given person or institution.

(7) Prohibition from leaving one's domicile or residence during certain days or hours, without thereby impeding the fulfilment of the habitual obligations of the accused.

(8) Obligation to undertake unremunerated tasks for the community, in public institutions, where possible avoiding any impediment of the sort indicated in the foregoing paragraph, subject to the express consent of the accused and his attorney."

These measures must be conveyed in writing and may not be applied for more than 30 days.

82. Preventive detention is prohibited in the case of indictments for misdemeanours or offences punishable by a fine, suspension or disqualification.

83. Preventive detention is mandatory and the court must order it under any of the following circumstances:

"(1) When it may be presumed that a prison sentence will have to be handed down.

(2) When, due to the nature of the alleged act and its circumstances, there is a danger that the accused will attempt to evade probation or in some manner impede evidentiary activities, trial proceedings or the execution of the sentence. The existence of such a danger shall be presumed in the case of a convicted person with a prior enforceable sentence or previous trial under way, unless the court believes with good reason that such circumstances are not pertinent to the above-mentioned situation.

In considering the record of the accused, the judge shall limit himself provisionally to the statements made by the accused, as well as to any other evidence available at the time and, finally, to the contents of the criminal record issued by the Technical Forensic Institute." 13/

84. Preventive detention may be replaced with another type of measure if the accused is ill or there are special circumstances causing immediate imprisonment to have a detrimental effect.

85. Preventive detention and all other measures restricting physical liberty shall cease:

"(1) If the trial has resulted in a prison sentence and the prison sentence is being served or probation has been granted.

(2) If the period of effective deprivation of liberty which would correspond to the indictment, or which would have been imposed through a non-executory sentence, may be considered to have expired.

(3) If a stay is ordered, or if an acquittal or a sentence which does not call for deprivation of liberty is handed down, even if such a decision is not final.

(4) If in the judgement of the court, the danger which justified such measures has ceased to exist or has diminished, even under the circumstances described in article 194.1 (1).

(5) If the preventive detention or restrictive measure was extended by more than three years as of its effective date of execution, unless the delay was occasioned by a manifestly inadequate activity by the defence. If the minimum sentence called for by the offence exceeds three years in prison, the measure shall cease once that minimum is reached.

200.2 In all other cases, the decision may be taken at any stage of the proceedings to terminate the preventive detention or other restriction on the physical liberty of the accused." 14/

86. The following are allowed as alternative measures:

"(a) Rendering services to the community.

(b) The payment of collateral or, if appropriate, day-fines.

(c) The seizure of a vehicle for up to six months, even if the vehicle is not the property of the accused or convicted person, if it might have been used in the offence in question.

(d) Other measures which, in addition to these, might assist the subject's rehabilitation, his ability to work, or prevention of the offence, or which might constitute appropriate compensation for the damage."

87. Community services:

"consist in the performance of tasks for municipalities or public entities free of charge. The tasks shall be assigned according to the skills of those who undertake them and shall take up not more than 18 hours per week, in such a way that their performance shall affect the normal work of those concerned as little as possible."

Article 10

Treatment of prisoners

88. The Committee's observations on the third periodic report of Uruguay referred to the lack of adequate police training. The Uruguayan State wishes to advise in this regard that on 12 July 1995, Act No. 16,707, known as the "Citizens' Security Act", was adopted, in which several articles deal with improving the training of law enforcement officers and wardens in detention centres.

89. Under article 28 of that Act, which amends the Police Organization Act of 1971:

"The police are responsible for ensuring compliance with the laws, regulations, orders, decisions and permits whose effective observance they are charged with monitoring; they are also responsible for cooperating with the judicial authorities and departmental governments.

To achieve these objectives, the police shall employ, under their responsibility, reasonably appropriate means and shall also consider the opportuneness of their use.

In order to fulfil the institutional objectives and tasks set out in article 2, members of the police shall use weapons, physical force and any other means of constraint in a rational, progressive and proportional manner, after first having exhausted the appropriate deterrent measures available to them in the circumstances.

The Ministry of the Interior shall instruct police personnel in accordance with the guidelines contained in the Code of Conduct for Law Enforcement Officials (United Nations General Assembly resolution 34/169 of 17 December 1979)."

90. In addition, article 32 of the Act empowers the Ministry of the Interior, and specifically the National Police College, to enter into agreements with the Universidad del Trabajo of Uruguay and the Universidad de la República to improve police training.

91. In the penal sphere, there is now:

"... an Honorary Commission composed of nine members with the task of advising the Executive on all matters related to the improvement of the prison system. This Commission shall be appointed by the Executive with the following membership: one member proposed by the Supreme Court of Justice - a former Minister of Justice - who shall preside; one proposed by the Ministry of Public Health; one by the Presidency of the General Assembly (legislative branch); one by the Faculty of Law of the Universidad de la República, and one by the bar association; a former criminal judge; a former prosecutor; a specialist in criminal affairs from the Ministry of the Interior; and a member drawn from a short list put forward by human rights NGOs.

The mandate of this Commission shall be to:

(a) Promote the updating of penal legislation in order to bring it into line with the relevant international standards approved by Uruguay.

(b) Propose methods for improving the classification of inmates, with due regard for the progressive system.

(c) Study the installation of maximum-security facilities.

(d) Plan the regulation of inmates' labour activities and apprenticeships and their compliance with labour and social security legislation.

(e) Consider the establishment of courts of enforcement and supervision in criminal cases.

(f) Implement any other suggestions deemed useful.

The Executive shall regulate the functioning of this Commission, which shall have 180 days to complete its work".

92. The spirit behind the latter provision has been commended by the most representative NGOs. 15/ From this standpoint, the creation of this area of debate opens up possibilities for remedying the shortcomings of the national prison system.

93. One of the Commission's specific tasks is to propose methods for the classification of inmates, using a progressive system. The Commission has recently published its final report, the findings of which are contained in annex 10.

Juvenile justice

94. Article 25 of the Citizen's Security Act consolidates in one provision all the legal procedures to be followed in cases involving criminal conduct by minors under age 18.

95. In order to find a temporary solution for the internment of minors under age 17 who have committed serious offences, and until the national institution in charge of the protection of minors (Instituto Nacional del Menor (INAME)) can provide special premises for that purpose, juvenile judges may arrange for their accommodation in high-security establishments, where they will be housed separately from adult inmates.

96. Thanks to the reforms already introduced, measures to re-educate minors in trouble with the law are being taken more quickly.

Article 11

Imprisonment for debt

97. Domestically, failure to meet a contractual obligation incurs civil, but not criminal, liability. There is no penalty in Uruguay calling for deprivation of liberty on account of personal debts. Article 52, which appears in the substantive part of the Constitution, ends as follows: "No one may be deprived of his liberty on account of debts".

Article 12

Freedom of movement

98. The right to freedom of movement and residence has constitutional status in Uruguay. All persons, whether nationals or aliens, have the right to enter and leave national territory without any restrictions whatsoever, except those required by the general interest.

99. The documents required for entering national territory are regulated by Decree No. 167/993 of 13 April 1993 (annex 11).

Article 13

Expulsion of aliens

100. The expulsion of aliens is governed by an old national law dating from 1936 which in practice has fallen into disuse.

101. The relevant administrative decision is taken by the President of the Republic in consultation with the Ministry of the Interior, by a well-reasoned decision that must be preceded by an investigation confirming offences committed by the alien. The decision may be subject to appeal for recommendation or hierarchical remedy, as laid down in articles 317 and 318 of the Constitution.

102. The Executive has not issued any expulsion orders against foreign citizens since 1985.

Article 14

Due process of law

103. The Uruguayan system of laws, comprising the Constitution and criminal, substantive and procedural law, recognizes and safeguards all the legal guarantees indispensable to ensure due process of law.

104. Regarding the fundamental guarantee to be tried by a competent, independent and impartial tribunal, decision No. 12.987 by the Second Court of Criminal Appeal is instructive (annex 12). In this case, the Uruguayan court annulled the entire proceedings and released a person accused of cattle rustling, on the ground that the court of first instance had been subjected to undue pressure by the higher courts.

105. This example clearly illustrates the role assigned by the national judicial system to the independent judgement of those called on to hand down justice.

106. Where the minimum guarantees provided by article 14, paragraph 3 are concerned, as has been indicated in earlier reports, these are all set forth in the Constitution or in specific statutes of Uruguayan positive law. Nevertheless, Uruguay recognizes that there are shortcomings in the compliance of its criminal procedure with international norms. Accordingly, since 1995 the four political parties represented in Parliament have committed themselves to initiate a far-reaching procedural reform.

107. The following measures provide an illustrative summary of the safeguards it is planned to introduce into the Uruguayan system according to the bill submitted to Parliament in 1995:

(a) The abolition of detention pending investigation. No one may be detained or arrested except flagrante delicto or in the presence of semi-conclusive evidence and on the written order of a competent judge. The police will receive instructions from the prosecutor, who, as the

representative of the State, is responsible for determining the facts, establishing whether they constitute an offence and ascertaining that the evidence gathered is sufficient to bring charges;

(b) The abolition of incommunicado detention;

(c) The right to assistance by counsel from the moment of arrest;

(d) The reformulation of criminal procedure to emphasize oral procedure and immediacy;

(e) The changeover to an adversarial procedure, under which the Prosecution Service assumes the fundamental role in determining whether a case against a suspect may be upheld before a court. The judge retains his role of stating the law, without being involved in the preliminary investigations as was hitherto the case, and acts as an impartial third party judging disputes set before him;

(f) Compromise between the parties is accepted in the case of unlawful acts which do not affect the public interest and particularly in cases in which the minimum penalty for the offence is less than two years, when the victim has been compensated, in the case of culpable wrongs, etc.

Article 15

Principle of non-delegation of judicial responsibility and non-retroactivity of criminal law

108. Uruguayan criminal law adopts and incorporates the fundamental principles of modern law and in particular the principle of legality whereby no one may be accused for acts which at the time they were committed did not constitute a criminal offence under the law. The principle of the non-retroactive nature of criminal law is also enshrined in article 7 of the Code of Criminal Procedure which provides as follows:

> "Article 7 (Criminal law and penal procedure). Whenever the criminal law introduces new offences or establishes a more severe penalty, these shall not apply to acts committed before they came into force. If, however, they abolish existing offences or reduce the corresponding penalty, they shall apply to acts committed before they came into force. In the first instance the proceedings shall be dismissed and in the second the penalty alone shall be amended, provided it has not been determined by an enforceable judgement."

109. The draft Code of Penal Procedure affirms the same principle, in simplified terms:

> "Article 17. Criminal law with regard to time and procedural effectiveness;

17.1 Whenever criminal law introduces new offences or establishes a more severe penalty, these shall not apply to acts committed before the law came into force.

17.2 Whenever criminal law abolishes existing offences or reduces the penalty, it shall apply to acts committed before it came into force. In the first case the proceedings shall be dismissed or the penalty annulled; in the second, the penalty alone shall be amended.

17.3 These provisions shall apply to laws on statutory limitation."

Article 16

Right to recognition as a person before the law

110. Article 21 of the Uruguayan Civil Code states as follows:

"All human beings shall be considered as persons. The following shall be considered as persons before the law and thus capable of assuming civil rights and duties: the State, the tax authorities, municipalities, the church and all corporations establishments and associations recognized by the authorities."

111. In order to acquire legal personality it is necessary to provide proof that certain formal requirements have been satisfied with the Ministry of Education and Culture. The Ministry, in a decision dated 21 September 1993 (annex 13), introduced regulations governing the standard requirements which have to be met by civil associations. The decision also covers the rights and obligations of members of associations, the required governing bodies and their electoral and voting regime.

Article 17

Right to privacy

112. Article 7 of the Uruguayan Constitution recognizes and sets forth the right of all inhabitants of the Republic to protection of their life, honour, liberty, security, work and property. No one may be deprived of these rights except as prescribed by the laws adopted in the general interest.

113. The right to privacy and the restrictions on intrusion by the authorities into the private sphere have been the subject of recent case law. Generally speaking, the right to freedom from undue interference may in practice clash with other rights which deserve equal protection.

114. Thus, for example, in a case before the juvenile court in which a mother requested a blood test to determine histocompatibility on a juvenile who was allegedly her son, the Uruguayan court adopted the following ruling:

"The Court possesses no coercive authority as there is no legal basis for the obligation to accept an examination by an expert (the right to physical integrity is set forth in the Constitution) and any limitation thereon could only derive from an express provision to that effect."

115. In that case 16/, it was held that for a court to compel a person to subject himself to a blood test in order to determine parenthood was an unlawful interference with a juvenile's privacy.

116. In criminal law, decision No. 12.797 of the Second Court of Appeal, which examines the limits to the right to privacy, is instructive in this respect. The case in question concerns an offence of usury, in which the evidence for the prosecution was made up of recordings of private telephone conversations between the offender and the victim. 17/

Article 18

Right to freedom of thought

117. Freedom of thought and of religion is protected by the Constitution under Uruguayan positive law.

118. As a rule, the right of all the inhabitants of the Republic to freedom of expression and to disseminate ideas is guaranteed. The prescriptive part of the Constitution recognizes that:

> "The transmission of thought by means of word, private writing or publication in the press or by other means of dissemination shall be free in all respects, without the need for prior censorship, the authors and where appropriate publishers or broadcasters remaining liable in conformity with the law for any abuses they may commit."

Article 19

Freedom of opinion

119. When Uruguay's third periodic report was considered (CCPR/C/64/Add.4) the Committee expressed its concern about the wording of a number of provisions of internal law governing freedom of expression. In particular the Committee disputed the compatibility of articles 19 and 26 of Act No. 16.099 (Press Act) with article 19 of the International Covenant on Civil and Political Rights.

120. In response to the doubts expressed by the Committee concerning the manner in which penalties are applied to breaches of the Press Act, Uruguay considers that it is appropriate to inform the Committee of a number of relevant legal decisions.

121. In decision No. 12.593, the Second Court of Criminal Appeal conducted an exhaustive review of the scope of the right of reply and the limits to which it was subject with respect to freedom of expression and thought. 18/ Similarly, decision No. 11.617 of the First Court of Criminal Appeal confirmed on appeal the acquittal of two journalists who had published information concerning a high-ranking police officer in written form in the press.

122. In its ruling, the court held as follows:

> "Public opinion, the nation itself - from which, as the Constitution proclaims, sovereignty derives - have the unrestricted right to criticize and judge all institutions, even to the detriment of their authority, such as the police, the Government, the courts and Parliament, because in so doing they are merely exercising the inalienable right to ascertain how those appointed by them, whether directly as in the case of the President of the Republic, senators, deputies and governors, or indirectly, in the case of judges, police officers and other officials, perform their public office as the agents of the actual source of their authority - the people itself."
>
> "The threat of contempt, hanging like a sword of Damocles over any investigative journalist, is alien to the very nature of democracy and, as the defending counsel Dr. S.P. demonstrated with outstanding skill, is characteristic of totalitarian regimes." 19/

Article 20

Propaganda for unlawful acts

123. Article 148 of the Penal Code, entitled "Propaganda for acts classified as offences", stipulates that "anyone who publicly advocates acts classified as offences shall be sentenced to between 3 and 24 months' imprisonment."

124. The general norm describing advocacy of unlawful acts is supplemented by article 149 of the same code, which penalizes and prohibits incitement to hatred, disrespect or violence towards specific individuals because of their skin colour, race, religion and national or ethnic origin.

Article 21

Right of assembly

125. Right of assembly is protected by article 38 of the Constitution which stipulates:

> "The right of peaceful unarmed assembly shall be guaranteed. No authority of the Republic may disregard the exercise of this right except by virtue of a law, and only when it is in the interests of health, safety and public order."

Article 22

Freedom of association

Legal precedents concerning anti-trade union activity

126. Trade unions have been free in Uruguay since the restoration of democracy in 1985. There are no restrictions of any kind on joining trade unions or federations.

127. The Constitution guarantees the right to establish trade unions and to join them. If employers adopt anti-trade union measures, the victim or the trade union acting on his behalf may take legal action and avail himself of existing constitutional remedies under domestic law for violation of a constitutionally protected right.

128. Uruguay considers that tripartite negotiation with trade unions and employers is an indispensable guarantee for the rule of law.

129. The Uruguayan trade union movement has combined to form a single trade union federation (PIT-CNT), whose council comprises representatives of the various sectoral unions, as indicated in the organization chart provided in document E/1990/5/Add.7.

130. The right of trade unions to call strikes is established under article 57 of the national Constitution.

131. In practice, collective bargaining and the conclusion of medium-term agreements have resulted in a huge reduction in labour conflicts. Since the early months of 1995, only a few general strikes have been called by the single trade union federation representing public and private employees.

132. The specialized administrative and labour courts, whose practice is founded on the theory of comprehensive protection, directly apply the ILO Conventions ratified by Uruguayan law when resolving cases of trade union persecution.

133. In case No. 12.331 20/ the Administrative Court ruled that the powers vested in the General Labour Inspectorate, which is attached to the Ministry of Labour and Social Security, by virtue of Act No. 12.030 ratifying ILO Convention No. 98, authorize it to impose "reasonable" penalties on firms engaging in anti-trade union activities.

Restrictions on the right to strike

134. The right to strike is not regulated by law. The restrictions that have been laid down by the State are based on considerations of general interest which may be affected by the withdrawal of services. Thus for example, in the case of hospitals and health services, strikes are not allowed if they affect emergency or serious cases, causing irremediable consequences. Under normal circumstances, the trade union movement is self-governing and authorizes the provision of minimum services by trade union members who have to perform essential community services (public transport, health, ports, etc.).

135. Civil servants belong to sectoral trade unions, most of which are affiliated to COFE (Confederación de Funcionarios del Estado), itself a member of the council of the Single Trade Union Federation (PIT-CNT).

136. In the armed forces, there are social groups but no unions as such. There have been no cases of actual strikes in the armed forces.

137. Where the police are concerned, there have been instances in which police officers have exercised the right to strike.

138. In 1992 there was a critical moment of conflict involving police officers on the beat over wages. 21/ The conflict, involving a work stoppage, was settled a few days later through negotiations with the Government and wage increases were awarded to the policemen concerned.

Legal precedents relevant to the right to strike

139. The practice of Uruguayan courts in relation to the right to strike illustrates the way ILO Convention No. 98 is applied. In decision No. 12.702 the Second Labour Court of Appeal (annex 19) conducted an extensive review of trade union rights, their scope and protection.

140. In the case concerned by the Court's ruling, several employees had been penalized subsequently to the conclusion of a strike. The Court conclusively asserted that:

> "Penalties imposed on workers for acts that occurred during the strike constitute anti-trade union practice."

141. In conclusion, the Court lifted the disciplinary penalties imposed by the employer and ordered the payment of the wages withheld together with an additional 10 per cent as damages and compensation.

Article 23

The family and society

Civil marriage

142. Since 1885, national legislation has recognized only civil marriage solemnized before the State's civil registry authorities as legitimate.

143. After the civil ceremony, the spouses are free to request a religious ceremony to be held by the church to which they belong, although no minister of the Catholic church or minister of the different faiths present in Uruguay may give their nuptial blessing unless the civil ceremony has been performed, under penalty of prison sentences for offenders.

Legal requirements for marriage

144. The following constitute impediments to matrimony:

(a) Failure to meet the age requirement, which is 14 for men and 12 for women;

(b) Absence of consent of the spouses;

(c) The existence of an undissolved previous marriage;

(d) A direct blood relationship or relationship by marriage, whether legitimate or natural;

(e) In the indirect line, a relationship between legitimate or natural siblings;

(f) A person guilty of homicide, attempted homicide or complicity in the homicide of one of the spouses may not contract matrimony with the other spouse;

(g) Failure to perform the religious marriage ceremony when it constitutes a resolutive condition in the contract and it has to be performed on the same day as the civil ceremony.

145. At the request of the future spouses and after completion of the formalities required by law for the solemnization of the marriage, a file is opened with the civil registrar of the domicile of either of the intending spouses. The planned marriage is published in the press and the banns must be posted in view for eight days at the civil registry office.

146. If any objections are made concerning impediments to the marriage, the Prosecutor's Office shall be required to investigate the matter. If the impediment proves to be unjustified or if no objection is made to the marriage, it is held in public, before tribunal and in the presence of four qualified adult witnesses who are unrelated to the spouses.

147. The marriage act or certificate is a public civil status document authenticating the legal bond between the spouses.

Obligations deriving from matrimony

148. By contracting matrimony the spouses take on the obligation to maintain and educate their children and to provide them with a profession or occupation corresponding to their status and circumstances. If the parents fail or are unable to perform this responsibility, it passes to the grandparents and other relatives in the ascendant line, whether legitimate or natural.

149. Where property is concerned, prior to the marriage the spouses may draw up an ad hoc written agreement specifying which parts of the property will not come under the community. In the absence of express matrimonial provisions, matrimony gives rise to joint property, whose acquisitions include all the property acquired in exchange for payment or free of charge by either spouse. Administration of the assets constituting the joint property is shared. Some forms of assets are excluded under the law, essentially property received through inheritance.

150. The community of property may be broken up during the marriage at the request of either spouse. After completion of the requisite legal formalities, all property subsequently acquired by either spouse will belong to that spouse alone and not be part of acquisitions.

Effects of the dissolution of marriage on children

151. Civil marriage is dissolved by the death of one of the spouses or by a legally pronounced divorce. Under Uruguayan domestic law divorce may be requested in the following circumstances:

(a) On causal grounds (adultery, attempted prostitution, quarrels and arguments, separation for more than three years, irreversible physical or mental incapacity, etc.);

(b) By mutual consent of the spouses;

(c) At the wife's request.

152. Article 167 of the Civil Code stipulates that the court may not finalize a divorce unless the situation regarding the custody of the minor children, visits and alimony has been resolved.

Article 24

Rights of the child

153. Annex 20 contains the information provided by Uruguay in its initial report to the Committee on the Rights of the Child, contained in document CRC/C/3/Add.37, relating to articles 2 and 7 of the Convention on the Rights of the Child.

Article 25

Participation in the conduct of public affairs

154. In conformity with Uruguay's constitutional regime and in accordance with the provisions of article 77 of the Constitution:

"All citizens shall be participants in the sovereignty of the nation; as such they shall be electors and eligible for election in the circumstances and manner prescribed.

Suffrage shall be exercised in the manner determined by law, subject to the following general principles:

(1) Compulsory registration in the civil register;

(2) Secret and compulsory ballot. The law, by an absolute majority of all the members of each chamber, shall regulate compliance with this obligation;

(3) Full proportional representation;

(4) Judges, members of the administrative and audit courts, the directors of the autonomous entities and decentralized services, serving military personnel of any rank and police officers of any category shall refrain, under penalty of dismissal and 2 to 10 years disqualification from eligibility to any other public office, from belonging to political committees or clubs, signing party manifestos, authorizing the use of their name and in general from any other public or private act of a political nature, with the exception of voting. These prohibitions shall not apply to the participation of directors of autonomous entities

or decentralized services in party organizations engaged in the specific task of studying problems of government, legislation or administration.

The electoral court shall be competent to take cognizance of and impose penalties for the above-mentioned electoral offences. Complaints should be made to the electoral court by either chamber, the Executive or the national party authorities.

Without prejudice to the above provisions, the facts shall in all cases be referred to the ordinary courts for any further action they may deem appropriate.

(5) The President of the Republic and members of the electoral court may not belong to political committees or clubs, hold positions of responsibility in party organizations, or in any manner participate in political electoral propaganda.

(6) Any electoral boards which may be appointed to deal with questions of suffrage shall be elected with the guarantees set forth in this article.

(7) Any new law concerning the civil register or elections, as well as any amendment or interpretation of existing laws, shall require a two-thirds vote of the full membership of each chamber. This special majority shall apply only to the guarantees of suffrage and election, composition, functions and procedure of the electoral court and electoral boards. Decisions relating to expenditure, budgets and internal regulations shall require only a simple majority.

(8) By a two-thirds majority of the full membership of each chamber, the law may extend the prohibitions contained in paragraphs 4 and 5 to include other officials.

(9) The election of members of both chambers of the legislature, of the President and Vice-President of the Republic, of the members of departmental councils, of intendants and, if appropriate, of autonomous local electoral boards, and of any organ whose organization or composition may be required by law to be determined by popular election, shall take place on the last Sunday in November every five years, without prejudice to the provisions of article 148.

The lists of candidates for both chambers and for President and Vice-President shall appear on a single ballot. A separate ballot, bearing the same party label, shall contain the lists of candidates, to be voted on jointly, for the departmental councils, intendants and, where appropriate, the autonomous local electoral boards, in accordance with the provisions of article 79.

(10) No legislator or intendant who resigns his post after assuming office shall be entitled to any compensation or retirement benefit which might be due to him by reason of his termination, until his full term of office has expired. This provision shall not apply to resignations because of illness duly substantiated by a medical board, or to those

expressly authorized by three-fifths of the votes of the full membership of the body concerned, or to intendants who resign three months before an election in order to stand as candidates.

(11) The State shall ensure that political parties enjoy the fullest possible freedom. Without prejudice to this requirement, parties shall:

(a) Effectively practice internal democracy in electing their authorities;

(b) Give maximum publicity to their statutes and programmes of principles, so that the public is fully informed."

Exercise of the right to participate

155. The nation has opted for a democratic, republican form of government. Sovereignty shall be directly exercised by the electoral body in elections, initiatives and referendums and indirectly through the representative authorities established by the Constitution.

156. Elections of national and departmental authorities for the offices of President, Vice-President, Senator, deputy, intendant and for the departmental councils must be held in accordance with the 1967 Constitution, in a single ballot.

157. In 1995, the four political parties represented in Parliament began talks over a constitutional reform designed, inter alia, to hold national and departmental elections at different times.

158. An initiative is an institution allowing 10 per cent of the citizens registered on the national electoral roll to request the President of the General Assembly totally or partially to reform the Constitution and to call a popular vote on the initiative.

159. Lastly, a referendum is a constitutional remedy whereby 25 per cent of the citizens registered on the electoral roll and entitled to vote may request the total or partial abrogation of an act adopted by Parliament and promulgated by the Executive. After having ascertained that the requisites for calling a referendum have been met, a ballot is held in which citizens must vote either for or against the proposal.

160. On 13 January 1989, a law was passed regulating the referendum and making it compulsory to vote.

Article 26

Right to equality and protection from discrimination

161. The right to equality is guaranteed by the provisions of article 8 of the Constitution, which stipulates as follows:

"All persons shall be equal before the law and no distinction shall be recognized between them other than that founded on talent and virtue."

162. As has already been stated in this report in relation to article 20 of the Covenant, violence or the threat of violence against anyone on account of their race, religion, colour or origin is considered criminal conduct and therefore punishable under the criminal law of the country.

Article 27

Rights of minorities

163. Regarding this article, the Government of Uruguay would like to point out that in Uruguay there are no ethnic minorities as defined by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

164. According to the Special Rapporteur, Francesco Capotorte, the term minority should be interpreted to mean an ethnic, religious or linguistic minority group that is clearly identifiable as such, which is numerically inferior to the rest of the population, and which possesses distinct cultural, historic, religious or linguistic characteristics.

165. While Uruguay recognizes the existence of diverse cultural or racial groups within Uruguayan society, these do not constitute minorities as such.

166. When Uruguay's third periodic report was submitted, it was stated that minority groups were fully integrated into the various political parties, which were a means of gaining access to public office. This assertion must be based on a misunderstanding. Uruguay would like to rectify this misconception, as access to public office is in no way linked to membership of political parties, but quite the opposite.

167. Article 58 of the Constitution, which has been in force since 1967, stipulates as follows:

> "Civil servants must serve the nation and not political interests. All activities other than professional activities shall be prohibited during working time and in the workplace and political propaganda of any kind there shall be unlawful.
>
> No groups may be formed for propaganda purposes using the names of public departments or referring to the professional link between their members."

Notes

1/ Annex 3A, La Justicia Uruguaya (legal journal).

2/ Annex 3B, document "Mujeres en cifras" ("Statistics on Women"), 1995.

3/ Ruben Correa Freitas, Derecho Constitucional Contemporáneo, vol. II, p. 101.

4/ Manuel García Pelayo, Derecho Constitucional Comparado, p. 162.

5/ Correa Freitas, op. cit., p. 105.

6/ Annex 5: Decree No. 258/92, Standards of Medical Ethics. [was this annex meant to be deleted?]

7/ The age of majority was set at 18 years by Act No. 16,719 of 11 October 1995.

8/ A professional association whose members include 80 per cent of the nation's medical professionals.

9/ Annex 7: Articles 58-65 of the Medical Ethics Code of the Medical Association of Uruguay.

10/ Dr. Guillermo Paysee of SERPAJ. Records of the House of Representatives, File No. 1715 of 1991.

11/ Annex 8: Verbatim record of the meeting with Dr. Raúl Iturria, Minister of the Interior. File No. 1715 of 1991.

12/ Bill on alternative measures to prison.

13/ Article 194 of the draft Code of Penal Procedure.

14/ Article 200 of the draft Code of Penal Procedure.

15/ Service Peace and Justice (SERPAJ), Institute of Legal and Social Studies of Uruguay (IELSUR).

16/ Annex 14. Decision No. 12.524, La Justicia Uruguaya, vol. CVIII, p. 307.

17/ Annex 15. La Justicia Uruguaya, vol. CX, p. 270.

18/ Annex 16. La Justicia Uruguaya, vol. CIX, p. 548.

19/ Annex 17. La Justicia Uruguaya, vol. CII, p. 45.

20/ Annex 18. La Justicia Uruguaya, vol. CVII, p. 93.

21/ In police parlance, "on the beat" refers to street surveillance activities.

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